

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
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2006 FEB -9 P 1:39
U.S. DISTRICT COURT
DISTRICT OF MASS.

FOUAD KADMIRI, A 74 724 747; and PAMELA
KADMIRI

Plaintiffs,

v.

ALBERTO GONZALES, as Attorney General of the
United States; MICHAEL CHERTOFF as the
Secretary of the Department of Homeland Security;
EDUARDO AGUIRRE, JR. as Director of United
States Citizenship and Immigration Services;
DENNIS RIORDAN as District Director of the
United States Citizenship and Immigration Services
in Boston, Massachusetts; UNITED STATES
DEPARTMENT OF HOMELAND SECURITY;
and UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendants.

CIVIL ACTION FILE NO.
05-11583-RGS

PLAINTIFF'S MOTION TO VACATE DISMISSAL

NOW COMES the Plaintiff in the above-captioned matter, and moves that this Honorable Court Vacate the Order of Dismissal entered January 24, 2006 in accordance with F.R.C.P.

60(b). In support thereof, Plaintiff states as follows:

The Order of Dismissal was entered due to Plaintiff's inadvertent oversight in filing a return of service. In fact, Plaintiff properly served the Defendants well within the required time

period, however, due to an inadvertent error, the Plaintiff did not timely file the return of service with the Court. Therefore, since Plaintiff served Defendants timely, Plaintiff moves that this Honorable Court excuse the inadvertent error by Plaintiff in failing to file said proof of service with the Court, as it is being submitted herewith.

WHEREFORE, Plaintiffs respectfully requests that this Honorable Court Vacate the Order of Dismissal entered on January 24, 2006.

Respectfully submitted,

Plaintiff,
FOUAD AND PAMELA KADMIRI,
By their attorney,



KARIMI & ASSOCIATES, P.C.
268 Summer Street
Boston, Massachusetts 02210-1108
(617) 292-3636
BBO No. 642332
Dated: February 9, 2006

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FOUAD KADMIRI, A 74 724 747; and PAMELA KADMIRI

Plaintiffs,

V.

CIVIL ACTION FILE NO.
05-11583-RGS

ALBERTO GONZALES, as Attorney General of the United States; MICHAEL CHERTOFF as the Secretary of the Department of Homeland Security; EDUARDO AGUIRRE, JR. as Director of United States Citizenship and Immigration Services; DENNIS RIORDAN as District Director of the United States Citizenship and Immigration Services in Boston, Massachusetts; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES.

Defendants.

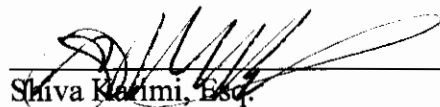
AFFIDAVIT OF SHIVA KARIMI, ESQ.

I, Shiva Karimi, Esq., on oath depose and state as follows:

1. I am the attorney for the Plaintiff in the above-captioned matter.
2. I am duly licensed to practice law in the Commonwealth of Massachusetts and before the Federal District Court for the District of Massachusetts.
3. This affidavit is being submitted in accordance with LR, D. Mass. 7.1 (A)(2).
4. In accordance with LR, D. Mass. 7.1 (A)(2), I conferred with counsel for the

Defendants prior to submission of the Plaintiff's Motion to Vacate, however, the parties were unable to resolve the issue.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY


Shiva Karimi, Esq.

KARIMI & ASSOCIATES, P.C.
268 Summer Street
Boston, Massachusetts 02210-1108
617) 292-3636
Mass BBO No. 642332

2/9/06
Date

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE

FEB -9 PM 1:39

U.S. DISTRICT COURT
DISTRICT OF MASS.

FOUAD KADMIRI, A 74 724 747; and PAMELA
KADMIRI

Plaintiffs,

v.

ALBERTO GONZALES, as Attorney General of the
United States; MICHAEL CHERTOFF as the
Secretary of the Department of Homeland Security;
EDUARDO AGUIRRE, JR. as Director of United
States Citizenship and Immigration Services;
DENNIS RIORDAN as District Director of the
United States Citizenship and Immigration Services
in Boston, Massachusetts; UNITED STATES
DEPARTMENT OF HOMELAND SECURITY;
and UNITED STATES CITIZENSHIP AND
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Defendants.

CIVIL ACTION FILE NO.
05-11583-RGS

AFFIDAVIT OF SHIVA KARIMI, ESQ.

I, Shiva Karimi, Esq., on oath depose and state as follows:

1. I am the attorney for the Plaintiff in the above-captioned matter.
2. I am duly licensed to practice law in the Commonwealth of Massachusetts and before the Federal District Court for the District of Massachusetts.
3. This affidavit is being submitted in accordance with Fed. R. Civ. P 4(i).
4. In accordance with Fed. R. Civ. P. 4(i), I served Defendant ALBERTO GONZALES, as Attorney General of the United States by sending a copy of the Complaint along

with a Summons on August 18, 2005 via Certified Mail, Return Receipt Requested. The corresponding Return Receipt was received by the Defendant on August 23, 2005. (See printout from USPS website confirming receipt, as original was never returned, attached hereto as Exhibit "A".)

5. In accordance with Fed. R. Civ. P. 4 (i), I served Defendant MICHAEL CHERTOFF as the Secretary of the Department of Homeland Security; EDUARDO AGUIRRE, JR. as Director of United States Citizenship and Immigration Services by sending a copy of the Complaint along with a Summons on August 18, 2005 via Certified Mail, Return Receipt Requested. The corresponding Return Receipt was received by the Defendant on August 24, 2005. (See original Certified Mail Receipt and Return Receipt, attached hereto as Exhibit "B".)
6. In accordance with Fed. R. Civ. P. 4 (i), I served Defendant DENNIS RIORDAN as District Director of the United States Citizenship and Immigration Services in Boston, Massachusetts by sending a copy of the Complaint along with a Summons on August 18, 2005 via Certified Mail, Return Receipt Requested. The corresponding Return Receipt was received by the Defendant on August 22, 2005. (See original Certified Mail Receipt and Return Receipt attached hereto as Exhibit "C".)
7. In accordance with Fed. R. Civ. P. 4 (i), I served Defendant UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES by sending a copy of the Complaint along with a Summons on August 18, 2005 via Certified Mail, Return Receipt Requested. The corresponding Return Receipt was received by the Defendant on August 22, 2005. (See original Certified Mail Receipt and Return Receipt attached hereto as Exhibit "D".)

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY


Shiva Karimi, Esq.

KARIMI & ASSOCIATES, P.C.
268 Summer Street
Boston, Massachusetts 02210-1108
617) 292-3636
Mass BBO No. 642332

2/9/06
Date

EXHIBIT “A”

7004 2510 0002 4498 4754

U.S. Postal ServiceTM
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 (Domestic Mail Only; No Insurance Coverage Provided)

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OFFICIAL USE

Postage	\$ 1.52
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.57

Postmark
Here

8/18/05

Sent to
 U.S. Attorney General, DHS
 Street, Apt. No.
 1500 Pennsylvania Ave. NW, Room 4545
 City, State, ZIP+4
 Washington DC 20530-0001

PS Form 3800, June 2002

See Reverse for Instructions



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Label/Receipt Number: **7004 2510 0002 4498 4754**
Status: **Delivered**

Your item was delivered at 4:48 am on August 23, 2005 in WASHINGTON, DC 20530. The item was signed for by A JENNINGS. A proof of delivery record may be available through your local Post Office for a fee.

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EXHIBIT “B”

7004 2510 0002 4498 4747

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For delivery information visit our website at www.usps.com .	
OFFICIAL USE	
Postage	\$ 1.52
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.57

Postmark Here
8/18/05

Sent To	Office of General Counsel
Street, Apt. No., or PO Box No.	Dept. of Homeland Security
City, State, Zip+4	Washington DC 20528

PS Form 3800, June 2002 See Reverse for Instructions

<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature X <i>James Adams</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Office of General Counsel U.S. Dept. of Homeland Security Washington DC 20528</p>		<p>B. Received by (Printed Name) JAMES ADAMS</p> <p>C. Date of Delivery AUG 24 2005</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt Kadmiri</p>	

102595-02-M-1540

EXHIBIT “C”

7004 2510 0002 4498 4730

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 1.52
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.57

Postmark Here
8/18/05

Sent To
Office of District Counsel, DHS
JFK Federal Bldg., Rm 425
15 New Sudbury St., Boston MA 02203
City, State, ZIP+4

PS Form 3800, June 2002 See Reverse for Instructions

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

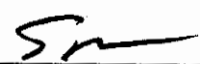
7004 2510 0002 4498 4730

1. Article Addressed to:
Office of District Counsel, DHS
JFK Federal Bldg.,
Room 425
15 New Sudbury St.
Boston MA 02203

2. Article Number
(Transfer from service label)

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

A. Signature
X  ☐ Agent ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery
8-22-05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

PS Form 3811, February 2004

EXHIBIT “D”

7004 2510 0002 4498 4778

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 1.52
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.57

Postmark Here
8/18/05

Sent To
 United States Attorney
 U.S. Courthouse, Suite 9200
 1 Courthouse Way Boston MA 02210

PS Form 3800, June 2002 See Reverse for instructions

1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 2. Print your name and address on the reverse so that we can return the card to you.
 3. Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 United States Attorney
 U.S. Courthouse,
 Suite 9200
 1 Courthouse Way
 Boston MA 02210

2. Article Number
 (Transfer from service label) 7004 2510 0002 4498 4778

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

A. Signature
 x *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
 C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Registered Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Other

4. Restricted Delivery? (Extra) ☐ Yes

RECEIVED

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Label/Receipt Number: **7004 2510 0002 4498 4778**
Status: **Delivered**

Your item was delivered at 10:38 am on August 22, 2005 in BOSTON, MA 02210. The item was signed for by N DTJEJ. A proof of delivery record may be available through your local Post Office for a fee.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the following individuals in the foregoing matter with one copy of the foregoing PLAINTIFF'S MOTION TO VACATE DISMISSAL by First Class Mail, postage prepaid, as follows:

United States Attorney
U.S. Courthouse, Suite 9200
1 Courthouse Way
Boston, Massachusetts 02210

U.S. Attorney General
Department of Homeland Security
950 Pennsylvania Avenue, N.W., Room 4545
Washington, DC 20530-0001

Office of District Counsel
Department of Homeland Security
JFK Federal Building, Room 425
15 New Sudbury Street
Boston, MA 02203

This 9th day of February, 2006.

A handwritten signature in black ink, appearing to read 'Shiva Karimi', is written over a horizontal line.

Shiva Karimi, Esq.
KARIMI & ASSOCIATES, P.C.
268 Summer Street
Boston, Massachusetts 02210-1108
617) 292-3636
Mass BBO No. 642332